

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Ross Craig
Assisted by: Ms Emily Bamber
RESPONDENT: Island Coachways Limited
Represented by: Ms Rachael Richardson, legal representative and Ms Hannah Beacom, Managing Director, Island Coachways Limited

Decision of the Tribunal Hearing held on: 13 November 2012, 27 and 28 February 2013 and 22 May 2013

Tribunal Members: Ms Georgette Scott, Chair
Mrs Joanne de Garis
Mr Peter Woodward

COMPLAINTS

- 1. The Applicant alleged unfair dismissal by reason other than redundancy.
2. The Applicant claimed that the Respondent had failed to provide, on request, in accordance with Section 2(1) of the Law, a written statement giving particulars of the reasons for his dismissal.

The Respondent claimed that the Applicant had been dismissed by reason of redundancy but had resigned to take up alternative work during his notice period.

DECISION

Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

The Tribunal finds that the Respondent was not in breach of Section 2(1) of the Law.

The Tribunal therefore makes no awards.

Amount of Award (if applicable): n/a

Ms Georgette Scott 8 August 2013
Chairman Date

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision. The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended (“The Law”).

Extended Reasons

1.0 Introduction

- 1.1 Mr Ross Craig, the Applicant, was assisted by Ms Emily Bamber.
- 1.2 The Respondent was represented by Ms Rachael Richardson, legal representative and Ms Hannah Beacom, Managing Director, Island Coachways, Limited.

The Respondent called the following witnesses:

Ms Hannah Beacom, Managing Director
TB, Director and IT Supervisor
TW, Fleet Manager
NR, Training Manager
JD, Office Manager

- 1.3 At the outset of the Hearing, it was confirmed that:

The agreed effective date of termination (EDT) was 24 February 2012.
- 1.4 The complaints were as follows:
 - 1.4.1 Unfair dismissal.
 - 1.4.2 Failure to provide written response to request for reasons of dismissal.

- 1.5 The Respondent in its ET2 contested both claims.

2.0 Facts Found by the Tribunal

- 2.1 The Respondent, Island Coachways Limited, (Island Coachways), is a Guernsey based company that provides transport services both to States organisations and to the private sector.
- 2.2 The Applicant was employed as an Operations Assistant with his employment commencing on 3 November 2010.
- 2.3 Over a number of years, the Respondent had provided the Guernsey Public Bus Service under a contract with the States Environment Department. On Thursday 3 November 2011, at a meeting between the Respondent’s Directors and the States Environment Department, it became apparent that this contract would not be renewed.
- 2.4 The loss of this contract meant that the Respondent would need to make the majority of their drivers and many of their administrative staff redundant, 69 job losses in total.

- 2.5 Initially it was anticipated that the contract would end as early as 31 December 2011 however, within a few days this end of contract date was changed to 31 March 2012.
- 2.6 On 7 November 2011, Ms Beacom issued a memorandum to all staff announcing the loss of contract and the fact that this public service would now be provided by an alternative provider. The letter stated that Island Coachways would continue to run its private hire operation and driving school from the premises of the tram shed site in St Peter Port and that the provision of school bus contract work would continue. In this memorandum Ms Beacom indicated that the new operator would require staff and therefore there could be some good employment opportunities for them after the end of contract with Island Coachways and that it was her intention to meet with members of staff throughout the week and that if they had any immediate concerns they should speak with their manager.
- 2.7 On 8 November 2011, the Applicant met with his immediate supervisor (JS) and using a form with predetermined headings gave input on his skills, his skill base, his general interests and his concerns for the future. (Tab 30 ER1 refers).
- 2.8 On 11 November 2011, Ms Beacom issued a further memorandum to all staff including the Applicant. This memorandum sought to update staff on a number of issues, firstly it indicated that the contract would be extended until 31 March 2012, and secondly the memorandum stated that Ms Beacom had come to the conclusion that she did not have the ability to meet with all staff at this time and had therefore asked that managers arrange meetings with each of their staff and in particular would be asking individual members of staff whether they had any skills that might be used in other business opportunities.
- 2.9 On 25 November 2011, Ms Beacom issued a further memorandum to all staff indicating that her priority was to secure employment options for Island Coachways staff with the new operator; she committed to pass on details of all those staff members who had indicated they would like to be considered by the new operator. It should be noted that at this point the new operator was not yet known. In this memorandum Ms Beacom referred to the Social Security Department that had offered to meet with any staff members affected by the “restructuring” to discuss available benefits and training and employment options. Ms Beacom also mentioned that she would be approaching the States Career Department to see if they could meet with members of staff as some had expressed an interest in re-training. Ms Beacom stated that she had been working on a budget for the Company in its future guise and that following a board meeting on 1 December 2011; there was a commitment for either herself or the line manager to meet with each member of staff in the two weeks commencing Monday 12 December 2011. In concluding this memorandum, Ms Beacom stated that her door was “open” if any member of staff had anything to discuss. (ER1 Tab 32 refers).
- 2.10 On 29 November 2011, Ms Beacom issued a memorandum to all staff, including the Applicant, confirming the appointment of a new contract operator who would provide the public service from 1 April 2012. (Tab 33 ER1 refers).

- 2.11 On Thursday 1 December 2011, a member of staff (AB) lodged a complaint with Ms Beacom as to the alleged behaviour of the Applicant. It was alleged that the Applicant had been rude to this employee. (Tab 20 ER1 refers).
- 2.12 On 7 December, Ms Beacom sent the Applicant a letter entitled "Pre-disciplinary Meeting". The letter required the Applicant to attend a pre-disciplinary hearing on 8 December during which a complaint of employee capability and conduct and performance related issues would be discussed. The letter stated that JS, his immediate manager and TB, a Company director, would be attending the meeting and that JD would take notes of this meeting. In the letter it was indicated that he was entitled to bring a fellow employee to the hearing in accordance with the Company disciplinary procedure. The letter concluded by stating that given the on-going concerns with the Applicant's performance, a decision had been made to suspend the Applicant from his duties on full pay until completion of the disciplinary procedures. (Tab 21 ER1 refers).
- 2.13 The Tribunal notes that prior to the letter of 7 December 2011, that the Applicant, in the period 7 April 2011 to 28 September 2011, had been subject to a number of verbal warnings and performance improvement plans by his management. (Tabs 12 to 19 ER1 refer).
- 2.14 The pre-disciplinary meeting took place on 8 December 2011 with TB and JS from the management side and Mr Ross Craig attending with a selected companion (NF), with notes being taken by JD. The Applicant asked what the disciplinary charges were against him and JS explained that there was concern over his attitude to other staff members and his use of Company software in that he was making errors. The Applicant asserted that given the nature of these complaints that the measure to suspend him was "draconian". JS responded by stating that there were other issues of concern and that emails regarding these issues would be forwarded to the Applicant for further discussion with management at a later time. The record of this meeting concludes with the Applicant requesting a speedy resolution to the process and stating that he did not want to lose his job, nor did he want to resign but he felt that the outcome had been predetermined.
- 2.15 On 15 December, whilst on suspension, the Applicant received a letter from Ms Beacom requiring him to attend a disciplinary hearing on 29 December 2011. This letter listed 11 issues that were for discussion. Documentation referring to some of these issues was also attached and the Applicant was advised that if he needed further documents he should request them. A copy of the disciplinary procedure was enclosed as well as a copy of his employee staff file that he had requested at a previous meeting. (Tab 5 EE1 refers).
- 2.16 The meeting of 29 December was postponed until 3 January 2012 due to the sickness absence of one of the managers. In the meantime, on 29 December 2011, the Applicant wrote to the Company appealing against his on-going suspension and listing a number of grievances he had with the current disciplinary process. (Tab 5 EE1 refers).
- 2.17 On 4 January 2012, the Company sent two letters to the Applicant. In the first letter (pages 92 and 93 EE1 refer), Ms Beacom responded to the Applicant's letter of 29 December. In this letter Ms Beacom sought to explain the Company position as to

the disciplinary process and her intent that a disciplinary hearing take place in the week following 4 January. The second letter dated 4 January 2012, stated that due to the reduced activity of the employer and the loss of the States of Guernsey bus contract, that his employment would be terminated with effect from 31 March 2012; the letter stated that his position within the Company would not exist beyond this date. (Page 94 EE1 refers).

- 2.18 On 5 January 2012, the Applicant lodged a formal grievance with the Company by letter. He enumerated a number of concerns including health and safety issues in relation to his current working environment, bullying and harassment conducted by his immediate management and complaints as to the nature of the disciplinary proceedings that had been taken against him since April 2011 and in particular his view that there was no reasonable justification for his being suspended from work on 7 December 2011. (Pages 96 to 102 EE1 refer).
- 2.19 A further letter was sent by the Applicant on 5 January 2012, to Ms Beacom with further comment and critique on the disciplinary process together with a request for the Applicant to be provided with full details of the redundancy procedure, selection process and the pool of potential candidates for redundancy.
- 2.20 The Applicant sent a third letter on 5 January 2012, asking for clarification as to why he had not been made aware of meetings held at Beau Sejour with staff from Island Coachways. Ms Beacom sent a response to this letter on 6 January 2012 indicating that a small number of UK drivers had requested to meet with the Environment Department with specific issues relating to their housing licences and right to work. (Pages 106 and 107 EE1 refer).
- 2.21 A disciplinary meeting took place on 9 January 2012. Present on the management side TB, Director and JS, Manager with the Applicant being supported by a selected companion (NF). JP, HR Officer, minuted the meeting. Topics included further discussion as to the need for suspension starting 7 December 2011, various critiques of the Applicant and his input as to what he thought was unreasonable concerning his job description and the duties required of him. (Pages 108 to 110 EE1 refer).
- 2.22 In response to the health and safety complaint about working environment, a Commerce and Employment Inspector attended the Respondent's premises on 12 and 16 January 2012 and made recommendations as to necessary changes. The Respondent made the necessary changes by 30 January 2012. (Tab 41 ER1 and Page 3 of Tab 6 ER1 refer).
- 2.23 Whilst still in employment with the Respondent, the Applicant was provided with three training sessions for a category D/DI and PSV licence. These training sessions being provided free of charge and between the dates of Tuesday 24 January 2012 and Friday 3 February 2012. (Tabs 41, 43 and 44 ER1 refer).
- 2.24 On 11 January 2012, the Applicant claims he wrote to Ms Beacom requesting a full written statement of reasons for dismissal and the rationale upon which he had been chosen for dismissal.

- 2.25 On Thursday 23 February 2012, the Applicant informed the Respondent that he had secured work as a Porter at the Castel Hospital. The Applicant asked Ms Beacom if he could leave employment prior to 31 March. Ms Beacom agreed to the shortened period of notice and the Applicant's last day of work was Friday 24 February 2012. (Tabs 45, 46 and 47 ER1 refer).
- 2.26 On Wednesday 28 March 2012, the Applicant wrote requesting written reasons for dismissal and on 3 April 2012, the Respondent provided a written reply. (Tabs 48 and 49 ER1 refer).

The Respondent:

3.0 Witness Testimony of Ms Hannah Beacom

- 3.1 In evidence, Ms Beacom advised that the Board of Island Coachways decided not to renew its contract for the provision of public bus services at a meeting on 2 November 2011. From that time all employees, including her, were at risk from redundancy. As a family run company, this was a very distressing time.
- 3.2 Given the scale of the required reduction in staffing levels everyone's job was at risk, including her own. As the future shape of the business was unknown the viability of the business beyond the contract termination was in serious doubt.
- 3.3 Ms Beacom confirmed there was no union representation and no staff association within the business and that nobody had asked at any time for a union representative to be engaged in the redundancy process. Neither was there an established redundancy policy. Ms Beacom and her management team took responsibility for all communication to the staff on this unprecedented change.
- 3.4 Ms Beacom also confirmed she decided to lead the redundancy process for the Company having taken advice from the Commerce and Employment Department.
- 3.5 Given the likely intense media interest and the limited time available to communicate with staff prior to public announcements Ms Beacom chose to issue a memorandum to all members of staff in order to keep them apprised on a rapidly developing situation. It soon became apparent to Ms Beacom that she could not be as directly involved in the interviews with her staff as she had originally intended. She had to oversee the redundancy process but also needed to focus on the required strategic developments if the remaining business was to survive as a viable entity beyond the end of the States contract, which had been extended until 31 March 2012.
- 3.6 As part of the consultation process line managers met with individual staff members to identify their skill base including all soft skills. These were collated on a standard template used for all staff. The decision was taken not to collate sickness or disciplinary record material. Ms Beacom explained that for the Company to survive into 2012, it would need a small, dedicated and flexible work force.
- 3.7 In evidence Ms Beacom confirmed the Applicant was considered for the sales role as were all staff with sales experience but he had the lowest score. The lack of management experience prevented his consideration for the Sales Manager and

Operations Manager roles and the lack of payroll experience excluded him from consideration for the new Administration Officer post.

- 3.8 Ms Beacom also arranged for staff from the Guernsey Careers Service and the Social Services Department to be available to assist staff with their options upon termination of employment with Island Coachways. She actively encouraged all staff to bring forward new business ideas that Board Members and Senior Management explored.
- 3.9 In response to direct questioning, Ms Beacom confirmed that she had deliberately tried to divorce the on-going potential redundancy situation from the disciplinary procedures to which Mr Craig was subject. In cross-examination, Ms Beacom confirmed that, after the Board had agreed the structure for the new company, re-interviewing of staff was not possible. Time constraints meant that the new structure needed to be populated with existing employees as far as possible by matching skill sets and soft skills determined from the earlier interview process.
- 3.10 The new company structure, post 31 March 2012, was determined at a Board meeting on 15 December 2011. Management posts were not confirmed until January 2012.
- 3.11 Ms Beacom acknowledged that Mr Craig was suspended and not physically in the business in the period following 15 December 2011. She additionally confirmed that no blanket communication on the availability of jobs was provided to any staff. Ms Beacom stated that she considered the process that the Company ran to identify employees to retain in the new structure was fair. It consulted as fully as possible in the timeframe available. It engaged in open dialogue and kept all staff as informed as was possible.
- 3.12 Ms Beacom confirmed that, in her view, the consultation included everyone and was fair. All staff received the four initial memoranda; each staff member was interviewed; comprehensive redeployment steps were taken, including offering driving courses with their skilled bus-driving instructor, and passing staff details to the new operator once appointed. However again, under cross-examination, Ms Beacom confirmed the Company had no written redundancy process.
- 3.13 Ms Beacom stressed that when she was aware anyone was unclear of the Company's predicament, she made every effort to correct their understanding. On reflection she recognised the language used in her internal memoranda to staff was not as direct as it could have been; the word "redundancy" was not used in any one of the four communications. However, she felt comfortable and confident that everyone was well informed that they understood the risk to their employment; they could have been in no doubt given the intense media interest in both the provision of the bus service and the future of the Company itself. There was no doubt in her opinion that this was a legitimate redundancy situation.
- 3.14 The rankings for staff versus anticipated roles remaining after 31 March 2012 were reviewed shortly after 15 December 2011. Interviews were held for coach drivers and office staff posts in January. The position previously held by Mr Ross Craig was not in the new structure.

4.0 Witness Testimony of TB

- 4.1 TB read from a witness statement. (ER1 Tab 5 refers).
- 4.2 TB confirmed he had been employed by the Respondent since 2000 and was promoted to directorial level in 2010.
- 4.3 TB expressed the opinion that he had had a good working relationship with the Applicant and they had mutual friends outside of work.
- 4.4 The witness stated that he had been aware of some issues relating to the Applicant's conduct and/or performance over a number of months prior to 8 December 2011, but it was not until that date that he had any direct involvement with these issues. (ER1 Tab 21 Refers).
- 4.5 At the meeting on the 8 December 2011, TB met with the Applicant together with JS. A work colleague, NF, accompanied the Applicant and JD took notes of the meeting. (ER1 Tab 21 refers). The meeting notes record that the primary concerns of the Respondent were his capability to perform his allotted tasks, his attitude to some other members of staff and his lack of progress against previous performance improvement plans. It was explained to the Applicant that his errors had a financial cost to the Company. RC was advised that the next step would be a formal disciplinary meeting.
- 4.6 Prior to this disciplinary meeting taking place the Applicant had written a letter dated 29 December 2011 detailing concerns as to the Respondent's handling of the performance and disciplinary issues relating to him and the poor state of his working environment. The Applicant also expressed his deep concern as to the length of his suspension from normal duties. (ER1 Tab 23 Refers). A further letter dated 5 January 2012, in which the Applicant raised a formal grievance in accordance with Company policy, followed this communication. (ER1 Tab 38 refers). The grievances were in relation to Health and Safety, use of Company laptop; bullying and harassment, the length of his suspension and various issues relating to allegations of his poor performance, which he thought were unfounded. As the letter of grievance referred to Ms Beacom's involvement in some of these issues it was decided that she should stand aside and TB would conduct the necessary investigations and make appropriate recommendations.
- 4.7 In relation to the health and safety issues these were delegated to TW (Premises Manager/Health and Safety Officer) who in turn liaised with Commerce and Employment inspectors who made recommendations for some changes in the working environment. (ER1 Tab 40 Refers). TB met with the Applicant on 20 January to communicate the recommendations, and the necessary action plan. The Applicant expressed his satisfaction with the planned changes.
- 4.8 TB also investigated the bullying allegations and could not find any evidence to support these claims. TB had from time to time observed the Applicant together with JS (an alleged bully) and had not observed any such behaviour; also TB found it strange that whilst the Applicant had stated that JS had done much of the alleged bullying the Applicant seemed eager to share an office with JS, there was an apparent contradiction in this behaviour. JS had emphatically denied that he bullied

the Applicant; however JS had stated that he needed to manage Mr Craig closely to ensure his duties were carried out correctly.

- 4.9 TB met with the Applicant again on 6 February 2012, who seemed very pleased with his new office arrangements; Mr Craig did not raise any other complaints at this time and seemed generally happy with his work.
- 4.10 TB also gave evidence on his views as to how the redundancy scoring was conducted. (ER1 Tab 35). He stated that in early February in response to a request from the Applicant he passed on some “redundancy scoring” sheets to him. Mr Craig could only see his own scores however he seemed satisfied with this information. TB commented that he had personally been one of the employees ranked on these documents and that on a couple of parameters Mr Craig had scored a higher rating than him. TB told the Tribunal that for some roles, such as “PSV Driver” Mr Craig did not have the requisite licence and that for other roles such as the sales assistant he was “outscored by a number of other employees. TB stated that he had not been involved in the redundancy scoring; Ms Beacom had managed the process.
- 4.11 TB had told the Applicant as part of these discussions that he had a particular concern that he, Mr Craig, did not have a “PSV” licence. He told Mr Craig he would be more employable if he obtained one and was supportive of the Applicant undertaking the “in-company” training.
- 4.12 TB observed that when Mr Craig found alternative employment at the end of February 2012 that he seemed genuinely pleased and appreciated that his request for a foreshortened notice period had been accepted. TB met with Mr Craig on 24 February and informed him that his investigation had not resulted in any findings, which supported Mr Craig’s allegations of bullying and harassment. (ER1 Tab 46 Refers).
- 4.13 TB was asked to comment on the letter from Mr Craig dated 11 January 2012, requesting written reasons for dismissal. TB stated that the first time he had seen this letter was during the Tribunal proceedings. (EE1 Page 111, Refers). TB was not at all sure if the Respondent had ever received this letter.
- 4.14 TB thought that the assertion by the Applicant that he should have been selected for one of the retained roles was entirely misguided. In his opinion TB thought that Mr Craig was neither suitable nor had the experience for any of the remaining roles.

5.0 Witness Testimony of TW

- 5.1 TW read from a witness statement. (ER1 Tab 6 refers).
- 5.2 TW confirmed the Respondent had employed him since 2006 as Fleet Manager. He was responsible at the time of the Applicant’s employment for fleet maintenance, premises and health and safety.
- 5.3 TW was not responsible for the management of the Applicant but did pass constructive criticism on to the Applicant’s manager. This would normally be in relation to Mr Craig’s attitude toward other staff which from time to time was

rude/and or derogatory. There were inappropriate comments about a female work colleague and Mr Craig would occasionally lose his temper in front of other colleagues.

- 5.4 As part of a common approach across the whole workforce TW met with all his direct reports to discuss their careers to date, skills etc. and much useful information was obtained which could be used to help develop a post 31 March 2012 business plan. The witness took the responsibility to prepare a business plan for commercial garage activities using currently employed skilled mechanics to service and/or repair third party commercial vehicles.
- 5.5 TW recalled that Hannah Beacom had an objective from the outset that every effort would be made to avoid redundancies but it was plainly evident that everybody's job was at stake whatever their level or role in the Company. The management team was open to any employee suggestions that might form the basis for future business activities.
- 5.6 Once it was announced that CT Plus would take on the contract from 1 April 2012, it was hoped that Island Coachways could work with the new company to place as many of the Respondent's employees with the new company as possible. However delays in contract signing resulted in a frustrating period of time during which this objective could not be pursued. This increased staff insecurity.
- 5.7 TW was shown the letter of grievance dated 5 January 2012, from Mr Craig (ER1 Tab 37 Refers) by TB. It was the first time the witness had become aware of the Applicant's issues with his working environment or that he was alleging workplace bullying.
- 5.8 TW liaised with Commerce and Employment staff on the working environment issues and they made a number of recommendations for example to generate more light, air and space for the Applicant. TW communicated the planned changes to Mr Craig on 20 January 2012. The changes were implemented and TW met again with the Applicant on 6 February 2012, who seemed very pleased with his new working conditions and at his own request was sharing an office with JS. At no point during these meetings with Mr Craig was there any reference to bullying by JS or any other member of staff.
- 5.9 Commenting on the redundancy process TW stated the remaining business needed primarily drivers and mechanics and very few administrative roles; it was his opinion that selection for redundancy had been done on a strictly objective basis and that this had resulted in the Respondent having to dismiss a number of very good employees; there was no favouritism in this process.

6.0 Witness Testimony of NR

- 6.1 NR read from a witness statement. (ER1 Tab 7 refers).
- 6.2 NR confirmed he had been employed by the Respondent since February 2011, initially as the Training Officer, and then in September 2012 was promoted to Training Manager.

- 6.3 NR had limited interaction with the Applicant until late 2011 when he moved into the same portacabin as Mr Craig.
- 6.4 NR observed that Mr Craig was sometimes prone to what he considered aggressive and inappropriate behaviour; he would frequently throw staples and scissors around the cabin and would “storm” out of the cabin disappearing for one to two hours at a time. He told the Tribunal he often observed Mr Craig rudely slamming the cabin window in driver’s faces when they came to ask him about their route and shift allocations. He was so rude to one member of the sales team that she was frightened to approach him.
- 6.5 NR told the Tribunal that as part of the redundancy process all employees were offered additional training if it would help their job prospects inside or outside the Respondent’s Company.
- 6.6 Mr Craig requested training to obtain a category D/D1/PSV licence so that he could drive passenger coaches/buses and as a result be more potentially employable by CT Plus when they took over the contract.
- 6.7 NR booked Mr Craig for six training sessions but in the event he only attended three of these lessons; those being on the 24 January, 27 January and 3 February 2012. (Copies of Training records to be found in ER1 Tabs 41, 43 and 44).
- 6.8 NR did not observe Mr Craig being bullied in the workplace and Mr Craig did not refer to workplace bullying at any time they were in contact at the workplace.
- 6.9 NR observed that as far as he was concerned the Respondent’s redundancy process seemed entirely fair. Employees were allowed time off for interviews and were also allowed to shortened notice periods if that helped employment elsewhere. It seemed to him that Ms Beacom tried to make herself available to any of the staff who wanted to talk to her about job prospects.

7.0 Witness Testimony of JD

- 7.1 In evidence JD said she understood that Mr Craig was making a complaint against Island Coachways on the basis that there was no genuine redundancy situation and/or that the redundancy process adopted was unfair.
- 7.2 As far as she was concerned, Island Coachways had not re-contracted with the States of Guernsey to run the public bus service on the Island and that had led to job losses.
- 7.3 JD confirmed that Ms Beacom issued a memorandum to all staff in early November 2011 with regard to the States bus contract. She remembered that a series of memos from Ms Beacom followed with updates with regard the status of the Company.
- 7.4 JD confirmed that she had an individual meeting with Ms Beacom in which she advised that she would prefer to move to the new service provider if there was a job available.

- 7.5 JD felt it was very clear that the most appropriate person at Island Coachways for the new administration role was JP. JP had been doing payroll prior to the restructure and had administrative experience.
- 7.6 JD understood that Mr Craig might have felt he should have been appointed to the administrative officer role. However JD felt that as Operations Assistant where he did not deal with payroll and, as he was neither part of the sales nor admin team, that he would not have been the best candidate for the remaining role.
- 7.7 JD confirmed that Island Coachways had arranged meetings for all employees with the new service provider, with the Careers Office and with the States Social Security Department, with regard to current vacancies in the job market and re-skilling. Not everyone went to these meetings as they were optional but she did recall that Mr Craig attended them.
- 7.8 JD said that as far as she was aware, the same redundancy process was applied to everyone. She knew that everyone received the same memos and went to the same meetings. She did not recall anyone complaining that they had been treated differently.
- 7.9 She felt that the redundancy process carried out was fair and that Ms Beacom went a long way to help her staff in the circumstances, given that there was no way to avoid, in her view, a significant number of redundancies caused by the loss of the States contract.
- 7.10 She added that the situation was very sad. People's jobs were at risk and there was uncertainty all around but everyone understood that Island Coachways had no other option and felt that Ms Beacom was especially helpful and understanding throughout the process.
- 7.11 In closing, she confirmed that she had sat in the disciplinary meeting between Mr Craig and the Company to take notes. At no point did she see JS act in a way that could be construed as bullying towards Mr Craig. She did not believe that the disciplinary process in any way led to Mr Craig being made redundant. She stressed that Mr Craig's role of allocating bus drivers had all but disappeared and in her view he did not have the right experience or qualifications for any of the remaining roles with the Company.

8.0 Applicant's Witness Testimony: Mr Ross Craig

- 8.1 Mr Craig opened his evidence explaining that as an employee of Island Coachways for only a few months he had been called for pre-disciplinary investigations on several occasions. He felt that personnel matters were not handled professionally. Additionally, he felt that the procedure was used inappropriately where instead a simple discussion between employee and employer would have been the more normal approach to remedy the sort of situations that were occurring. He expressed his concern about the frequency with which such disciplinary hearings were undertaken in the Company, not just with him; he discovered this to be the case with a colleague as well.

- 8.2 Mr Craig explained that on 7 December 2011, he was called in and advised that he was to be suspended from duty with immediate effect. The suspension was because there were concerns about his performance and that a complaint had been received about his conduct from a colleague. Mr Craig explained that the manner in which he was escorted from the premises was deeply humiliating. It left him shocked and upset.
- 8.3 Mr Craig was concerned that his pre-disciplinary meeting was scheduled for the next day. He had texted Ms Beacom asking for a deferment. She replied by telephone to explain that as it was a pre-disciplinary fact-finding meeting only, she felt there was little reason to postpone the meeting.
- 8.4 Mr Craig had received a pre-disciplinary meeting letter inviting him to the meeting and informing him that the basis of the complaint against him was one of capability and additionally that his conduct and other performance related issues would be discussed. (Tab 21 refers).
- 8.5 Mr Craig attended the meeting and again repeated that he had not been given enough time to prepare as it had been less than 24 hours since he had received the news of his suspension and concerns with regard to conduct and performance related issues. Mr Craig explained that given the whole purpose of the pre-disciplinary meeting, in his view, was to determine whether a disciplinary hearing was necessary, the apparent lack of preparation by the Company and its inability to offer specific charges against him fed his concern with regard to the process. In closing the meeting Mr Craig explained that he felt that the decision to dismiss him had already been made. Before leaving, he asked for copies of relevant material. Additionally he asked for copies of the minutes.
- 8.6 Mr Craig explained that under cover of a letter dated 15 December 2011 he received the material he had requested at the pre-disciplinary hearing. The letter itself confirmed a disciplinary hearing date of 29 December 2011. The basis of the complaint against him was that despite being under a performance improvement plan on 21 June 2011 and a second performance improvement plan on 20 August 2011 and a warning issued on 28 September 2011, the Company was still having issues with regard to standards of work. (Tab 22 refers).
- 8.7 Mr Craig noted that the complaint about alleged conduct was not referenced in this letter. Mr Craig enquired on this matter on 29 December 2011 in writing. He never received a response however the conduct matter was raised again in the subsequent disciplinary hearing on 9 January 2012, although no further action was taken in respect of it. Mr Craig explained that the disciplinary hearing scheduled for 29 December 2011 was postponed that morning due to the ill health of one of those conducting the hearing.
- 8.8 His letter of the same date was sent to the Company on 30 December 2011. The letter appealed against the initial suspension and the dismissal that he fully anticipated given the way that Island Coachways was dealing with the matter. Mr Craig emphasised that he took the view that, as a dismissal appeared predetermined; he should simply lodge an appeal straightaway.

- 8.9 The letter also indicated that he was preparing a grievance that he would be lodging under a separate letter.
- 8.10 Mr Craig explained that the hearing, which had been rearranged for 3 January 2012, was, on that morning postponed once again. On this occasion the reason for the deferral was Ms Beacom's wish to further consider the matters raised in his letter dated 29 December and received 30 December.
- 8.11 Mr Craig confirmed that the disciplinary hearing took place on 9 January 2012. He explained that due to the amount of time that had passed between the date of his suspension and the hearing, many of the points were hazy in his memory and he could not answer in detail many of the questions raised. He also felt his absence from the office and his limited access to relevant systems to refresh his memory limited his ability to respond to the challenges made to him.
- 8.12 After considering the performance related matters which had been discussed in the pre-disciplinary hearing of 8 December 2011, points raised in Mr Craig's letter of 29 December 2011 were also discussed. Mr Craig said that on several occasions the Company stressed that no predetermined decision had been made. However Mr Craig said he refused to accept that the matter was not predetermined. The Company again explained that the reason for his suspension was due to the mistakes he had made costing the Company time and money. Mr Craig refused to accept that the alleged mistakes were an appropriate basis for his suspension. Mr Craig felt that any member of staff would continue to learn on the job after the expiry of their probation period.
- 8.13 Mr Craig reflected in some detail on the matters discussed during the disciplinary hearing. These included relocation to an office to be shared with JS and in addition regular meetings with JS detailing workloads and accuracy with the Company setting clear goals and expectations for Mr Craig to achieve. Mr Craig said he stressed that he felt he was more than capable in performing the duties as detailed in his job description and that he required clearly defined goals and regular feedback relating to his accuracy to perform to the Company's expectation.
- 8.14 He was notified by telephone later that day that no further action was to be taken against him with regard to the disciplinary matters raised and that he should report to his desk as usual on 10 January 2012. Mr Craig said he was pleased that no further action was to be taken in respect of the disciplinary matters, however, it just reinforced his belief that there had been a predetermined decision to remove him from the Company. It made no logical sense to treat a performance issue so seriously that it warranted suspension for over a month and then take no further action. It was his genuine belief that the Company only decided not to take any further action because he had highlighted that its process was fundamentally flawed.
- 8.15 Mr Craig noted, however, that by the time the disciplinary process was completed, his concerns about the integrity of the process and apparent predetermination were irrelevant, as he had been dismissed anyway.
- 8.16 As regards redundancy, Mr Craig explained that on 7 November 2011, Ms Beacom had sent a memorandum to all staff informing them that the Company would not

continue to provide the States of Guernsey Bus Service beyond 31 December 2011. The memorandum had stated that not all staff would retain their jobs and that Island Coachways would embark upon a consultation period with staff that would include Ms Beacom meeting with all staff personally.

- 8.17 On 11 November 2011, Ms Beacom sent a further memorandum to all staff informing them that the Company's bus service contract with the States of Guernsey had been extended until 31 March 2012. Additionally Ms Beacom indicated that the consultation exercise would be delegated to line managers as she had insufficient time to meet with all staff.
- 8.18 Mr Craig explained that he met with his line manager, JS, who took him through a number of set questions from a list relating to his skill set, experience gained in prior employment and what he wanted to do in the future. Mr Craig said he indicated he wished to remain with Island Coachways or if necessary continue his career with the new operator. Mr Craig said that he was not told this meeting was of any significance or was part of a selection process for redundancy.
- 8.19 He considered that he was prejudiced in any consideration for redeployment opportunities on several grounds and in particular as a result of Ms Beacom's delegation of the discussions. Whilst he was not uncomfortable with having the discussion with JS and did not object at the time of the meeting, which was explained to him as informal, he had been being bullied by JS as referenced in his later grievance letter.
- 8.20 Mr Craig explained that on 25 November 2011, he along with all staff received a memorandum from Ms Beacom stating that her priority was to secure their employment options with the new operator. Mr Craig said Ms Beacom did not meet with or otherwise contact him further to that memorandum notwithstanding that in it she stated she would meet with all staff during the two-week period commencing 12 December 2011.
- 8.21 Mr Craig explained it was his firm belief that as he was suspended from work on 7 December 2011 and was not consulted at any stage prior to 4 January 2012 with regard his position with the Company, that Ms Beacom had decided that he would be dismissed in the course of the disciplinary process and that it was not necessary to include him in any redundancy process.
- 8.22 Mr Craig expressed his surprise when, on 4 January, he received a letter confirming that he would not continue with the Company after 31 March 2012, because he had not received any indication that his job in particular would become redundant.
- 8.23 Mr Craig explained that he had no discussion at any time with any of Island Coachways management about any measures that the Company may adopt to try and avoid redundancies.
- 8.24 Mr Craig said that Ms Beacom had not invited proposals from staff or other money saving measures that could have helped to avoid or minimise redundancies.
- 8.25 He did note a memorandum from Ms Beacom the 29 November 2011 in which she stated that she had provided names and information from interviews with line

managers to the new operator. Mr Craig stressed that he was not included in any consultation that may have continued after the date of his suspension.

- 8.26 He felt the Company had not considered any redundancy procedure carefully and did not share information adequately with staff. In this regard he highlighted that no further update with regard to Company budget and structure, as referred to in Ms Beacom's memorandum the 29 November 2011, was communicated to the staff.
- 8.27 Mr Craig said Island Coachway's letter of 4 January 2012 gave no opportunity for a right of appeal against his dismissal nor did it provide the basis for his selection for redundancy nor state whether any process had been adopted in considering redundancies.
- 8.28 Upon return to work on 10 January 2012, Mr Craig explained he received supporting papers with regard the selection process. He said it was clear that some form of process had been followed but it had never been explained to him. He had never been given any opportunity to make representations about the process, the selection criteria that the Company may have adopted, his scores, or any right of appeal. Mr Craig noted the information was not given to him prior to his dismissal letter of 4 January 2012. Papers were provided only in response to his formal request by letter dated 5 January 2012.
- 8.29 Mr Craig said that in his view if he was genuinely made redundant, he was unfairly selected for redundancy, as a form of victimisation for having raised a grievance citing bullying by staff including the managing partner Ms Beacom and for complaining about health and safety issues. It seemed that the manner of removing him from employment with the Company after the flawed disciplinary process could not be relied upon by the Company to dismiss him.
- 8.30 Mr Craig felt it was not made clear to staff that Island Coachways was restructured. He felt the redundancy pool was not clearly identified and that there are other members of staff still at the Company whose jobs he could have done with little or minimal additional training. No evidence had been provided to him of consideration of what else he could do at the Company.
- 8.31 Mr Craig challenged Island Coachway's handling of redeployment. He was neither told of any other opportunities within Island Coachways nor that the new service provider was actively seeking to employ staff. He did not know what vacancies the new service provider sought to fill when the vacancies were being advertised and whether any preference would be given to applicants from Island Coachways before the vacancies were advertised to the general public.
- 8.32 Mr Craig believed that whilst on annual leave in February 2012, Island Coachways became aware that the new service provider was seeking to employ an Operations Manager and Operations Assistant and did not bring the vacancies or possibility of such vacancies to his notice.
- 8.33 He believed several of Island Coachways staff were interviewed for those roles and he was deprived of the opportunity to apply for them. He believed they were advertised externally for one night only indicating that preference would be given to staff employed by Island Coachways. He did not see the adverts in the paper.

- 8.34 In evidence Mr Craig confirmed that during a meeting with JS and Ms Beacom on 4 January 2012, he was offered opportunity to obtain his PSV licence. However, he added that when asking to be trained as a tour guide he was refused.
- 8.35 Mr Craig drew attention to his grievance letter dated 5 January 2012. No hearing was convened until he notified the Company on 23 February of his intention to leave prior to 31 March 2012. The meeting took place on his last day of service, 24 February 2012. Mr Craig explained that disillusioned by the Company's approach to personnel issues and considering that the meeting was a tick box exercise, for which there was no simply no point in dignifying the charade, he remained passive towards the process and resigned himself to an attitude of "whatever".
- 8.36 As a result of the grievance, Island Coachways sought advice about conditions in the portacabin. A report was received by Island Coachways, which Mr Craig was permitted to read but could not retain. It made several findings supporting his concerns and the Company responded.
- 8.37 Mr Craig confirmed this happened after Ms Beacom had written to him confirming his dismissal on apparent grounds of redundancy.
- 8.38 Mr Craig said on 11 January 2012 he wrote to Island Coachways by email seeking written reasons for dismissal to which he did not receive a response.
- 8.39 He wrote again by email on 28 March 2012 repeating his request.
- 8.40 Mr Craig said the majority of the content in the reply dated 3 April 2012, he could not agree with. In summary, Ms Beacom had referred to her letter of 4 January 2012, and sought to rely upon that as a written statement of the reason for dismissal. Mr Craig highlighted that this letter predated his initial request for a written statement and steadfastly avoided, as all Ms Beacom's correspondence had done, the word "redundancy" and in his view did not constitute a clear statement of the reason for his dismissal. (Tabs 48 and 49 refer).

9.0 Respondent's Closing Arguments

- 9.1 In 2001, the Respondent lost the States contract to run the Island's bus service. This resulted in a huge reduction in all staff, administrative as well as bus drivers (69 job losses in total). It is noted by the Respondent that throughout the course of the Respondent's evidence the Applicant's representative had openly conceded that the Respondent faced a genuine redundancy situation.
- 9.2 The Respondent, faced with this unavoidable redundancy situation, stated that it went through a fair, objective and thorough consultation process, during which it was decided that the Applicant did not possess the suitable experience, or qualifications for the Respondent's limited retained roles. The Respondent applied exactly the same consultation and selection process for the Applicant as it did for every other member of staff.
- 9.3 The Respondent expected that the Applicant would argue that the disciplinary process he was subject to at the time of the redundancy process played a part in his

selection for redundancy and that this rendered his dismissal unfair. The Respondent strongly denied that the Applicant's disciplinary record played a role in the selection for redundancy. The Applicant simply was not qualified at all (or not as qualified as those who were selected) for the retained roles.

9.4 The Applicant was given three months notice of his selection for redundancy (in person and by letter) on 4 January 2012. The letter of 4 January 2012 set out clear reasons for the Applicant's dismissal. These reasons for dismissal were repeated (at the Applicant's request) by letter dated 3 April 2012.

9.5 The Respondent suggested that the Applicant might further argue that the Respondent did not offer him a formal right of appeal. The Respondent contended that the Applicant was given ample opportunity throughout the nine-week redundancy process to voice his concerns and/or meet with the Managing Director to discuss any issues he might have had with the redundancy/selection process. However, the Respondent's case, supported with case law, holds that there is no obligation to offer employees a right of appeal on dismissal and that this is particularly so in the case of redundancy dismissals. Furthermore, the Respondent maintained that it was clear from the Applicant's letter of resignation that he was happy with the Respondent upon his departure and quoted from his letter of resignation:

"I would like to take this opportunity to thank the Company for the past 16 months and wish you all the best in the future." (Tab 45, ER1 refers).

9.6 The Respondent added that it was testament to the hard work and dedication of the Respondent Company that as a result of its thorough consultation process, which included amongst other things, facilitating:

- Interviews with the new bus provider
- Meetings with careers advisers
- Training to improve and obtain skill set/qualifications
- Meetings with Social Security.

As a result of the above, not one of the employees made redundant in 2012 was left unemployed at the end of the process, including the Applicant. The Respondent added that of the 69 employees who lost their jobs, the Applicant was the only employee to have instigated proceedings of any kind against the Respondent.

9.7 The Respondent provided the following references to legislation and codes of practice in support of its points:

Section 6 (2) (c) of the Employment Protection (Guernsey) law, 1998 provides that redundancy is a potentially fair reason for dismissal if it is both a genuine redundancy situation and if the dismissal was within the bounds of reasonable responses.

Section 34 of the 1998 Law provides that:

"An employee who is dismissed shall to be taken to be dismissed by reason of 'redundancy' if the dismissal is attributable wholly, or mainly to:

(a) the fact that the employer has ceased, or is expected to cease, to carry on the business for the purposes of which the employee was employed by him or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind... have ceased or diminished or are expected to cease or diminish.”

9.8 The Respondent made the case that it faced a genuine redundancy situation after losing the States contract to run the Island’s bus service. The loss of this contract directly resulted in a reduction of the Respondent staff from 97 to 28 employees, and the Applicant had conceded throughout the course of the Tribunal hearing the redundancy situation was indeed genuine.

9.9 As to whether the Applicant's dismissal was reasonable in circumstances:

Section 6(3) in the 1998 Law provides that a dismissal will be fair where, in the circumstances (including the size and administrative resources of employer’s undertaking) the employer acted reasonably in treating a redundancy as a sufficient reason for dismissing the employee.

9.10 Section 10 of the States of Guernsey Code of Practice entitled “Handling Redundancy”, states that there are three principles of a fair redundancy procedure as follows:

- Consulting with employees about redundancy situations while before final decisions are reached
- Ensuring that there is a fair and objective basis for redundancy selection
- Taking all reasonable steps to avoid or minimise redundancy e.g. offering alternative work if it exists.

9.11 These three Code of Practice principles mirror the well established "Polkey" guidelines for reasonableness in redundancy dismissals (Tab 1 of ER2 refers) and are summarised as follows:

- Warning and consulting employees
- Adopting a fair basis on which to select for redundancy and
- Consideration of suitable alternative employment.

9.12 In relation to these guidelines the Respondent claimed it went through a fair, objective, thorough consultation process with all its employees, including the Applicant, over a period of nine weeks commencing with the first warning memorandum to all staff on 7 November 2011, to the letters of dismissal sent out on 4 January 2012.

9.13 The Respondent warned all employees including the Applicant, as soon as it became likely that the States bus service contract would be lost and as soon as redundancies became a possibility.

9.14 The Respondent consulted with all employees, including the Applicant, both in a group situation and individually. The Respondent also applied fair, objective and

consistent selection criteria when considering the suitability of the Applicant for one of the few retained roles.

- 9.15 The Respondent maintained that it was particularly helpful to employees in exploring alternatives to redundancy and particularly open-minded when it came to considering ways that the business could diversify.
- 9.16 Further in relation to the “Polkey” guidelines the Respondent had applied its mind to the redundancy situation in this case. It believes it had a clear, logical and well thought out selection process and applied this through its management over the period of nine weeks.
- 9.17 This process included:
- Initial and thorough management meetings
 - Four separate and detailed upstate memoranda circulated to all staff throughout the process
 - Individual consultation with all employees
 - A final meeting with Hannah Beacom
 - A detailed letter of dismissal providing reasons for selection
 - Individual invitations to meet with Hannah Beacom to discuss the redundancy/selection process at any time throughout the process
 - Facilitating interviews with the new bus service provider
 - Facilitating interviews with a Careers Adviser and the Social Security Department
 - Offering additional training to improve employee skill sets. (The Applicant commenced such training through the Respondent to acquire a PSV licence, however he ceased the training programme partway through (without informing the Respondent or his Training Manager, (NR) in order to take up employment elsewhere.
- 9.18 The Respondent’s restructuring and redundancy process led to agreed diversification services to be offered by the Company and limited retained roles that would be needed to provide such services. The Applicant was assessed against these roles.
- 9.19 The retained roles at the Respondent Company were in the following areas:
- Senior management - the Applicant had no management experience
 - Administration payroll - the Applicant had no payroll experience
 - Sales - the Applicant had sales experience and was therefore considered for a sales role but scored the lowest of those scored in this category
 - Coach drivers - the Applicant did not hold the necessary category driving licence (he was offered and commenced training in this regard, but the Applicant stopped of his own record prior to completing the training).
- 9.20 In the light of the Applicant’s lack of suitability for the retained roles, ascertained as part of the Respondent's consultation process, the Applicant was selected for redundancy and was given notice of termination of employment on 4 January 2012. (Tab 36 of ER1 refers).

9.21 The Respondent demonstrated that the Applicant's consultation process was no different to that of all other employees at the Respondent Company. The Respondent did everything it could to facilitate employment for redundant employees with the new bus service provider. The Respondent did not provide employee references to the new provider (negative or otherwise) as the Applicant had initially alleged had been the case. The new bus service provider requested details of names, roles, housing licence status, length of service and hours worked per week, so a basic factual table was created in this regard (Tab 42, ER1 refers) and sent to the new provider (with the consent of each employee whose data was contained in the table).

9.22 In relation to appeals against redundancy dismissals the respondent referred the Tribunal amongst others to:

Taskforce (Finishing and Handling) Ltd v Love (2005) UKEAT in which the distinction between misconduct dismissals and redundancy dismissals was reiterated in that there is less emphasis on the need for an appeal structure in redundancy dismissals:

"the absence of an appeal procedure does not of itself make a dismissal unfair... We are satisfied that there is no rule... that a dismissal for redundancy will automatically be regarded as unfair on account of the absence of an appeals procedure... **an appeal procedure was not required before dismissal from redundancy could be found to be fair**... It is just one of many factors to be considered in determining fairness... accordingly it would be wrong to find that a dismissal on the grounds of redundancy was unfair because of the failure to provide employee with an appeal hearing"

9.23 The Respondent holds that there is similarly no requirement for an appeals process in redundancy dismissals and makes reference to the Guernsey Commerce and Employment Code of Practice - Handling Redundancy. The 10-page document submitted by the Applicant in support of his case contains the word 'appeal' only twice and only in relation to selection criteria.

9.24 Regardless, the Respondent holds that the memoranda circulated to all employees throughout the redundancy process continually invited discussion and the Applicant was well aware that he could have, at any time, approached Hannah Beacom, TB or any other member of management to query any aspect of the redundancy process or his selection for redundancy.

9.25 During his notice period the Applicant gave the Respondent an amicable letter of resignation dated 23 of February 2012 (Tab 45 of ER1 refers) requesting that his notice be shortened so that he could take up employment elsewhere.

9.26 The Respondent referred to the following Guernsey case law:

In **Black v Bucktrout and Company Limited, 2004** the Applicant's redundancy selection assessment results are not conveyed to him by the Respondent but this did not render the dismissal unfair. In **Black**, as in this case, the Applicant parted on good terms to take up employment elsewhere.

In **Upton versus Geomarine Ltd, 2005** the Applicant had not been offered a formal appeal process, but had been given the opportunity for further meetings should he wish. The Applicant did not request any additional meetings and the dismissal was rendered fair. The Tribunal found it to be sufficient that the Respondent had "acted within the spirit of the code" as regards consultation.

In **White v Union Street Stores, 2006** the redundancy dismissal was held to be fair although the Applicant was not offered the opportunity to appeal the dismissal and even though the Tribunal concluded the consultation process had been "rather inept".

9.27 In summarising the Respondent made the following points:

- It cannot be denied that at the time of the Applicant's dismissal the Respondent faced a genuine redundancy situation.
- Further, it cannot be denied that the Respondent followed the three Code of Practice Principles and the UK "Polkey" guidelines.
- It is particularly notable that not one other of the 69 employees who lost their jobs and went through exactly the same redundancy process as the Applicant has brought a claim against the Respondent.
- The Applicant was not unfairly dismissed as alleged or at all.

9.28 With regard to the claim that the Respondent failed to provide the Applicant with written reasons for dismissal:

The Applicant asked for written reasons for dismissal in a letter dated 11 of April 2012, but not received by the Respondent until 31 of January 2012. (ER 5 refers). It was noted that he had just gone through a nine-week redundancy process, preceded by a letter from the Respondent dated 4 January setting out the reasons for his dismissal.

Five weeks later on 20 of March 2012 the Applicant, who had continued to work for and train with the Respondent for his PSV licence, and had resigned himself to seek up employment elsewhere, sent another letter to the Respondent asking for written reasons for his dismissal. The Respondent duly wrote back to the Applicant on 3 April 2012 providing a repeat of the reasons for his dismissal.

It should also be noted that the letter sent by the Applicant on 11 January 2012 also refers to the Applicant's written grievance lodged on 5 January. The Respondent dealt with the Applicant's grievance separately and the Applicant continued to work for and train with the Respondent for his PSV licence during this time.

9.29 In summary the Respondent states that the Applicant was provided with written reasons for his dismissal both in his initial termination letter dated 4 January 2012 and in the Respondent's letter to him dated 3 April 2012.

10.0 Applicant's Closing Arguments

- 10.1 The Applicant's case may be summarised by stating that the Respondent decided to end the employment contract by whatever means but having carried out a flawed disciplinary process, and sought to dismiss the Applicant under the cloak of an equally flawed redundancy process. The Applicant's contention is that two letters sent to the Applicant by the Respondent both dated 4 January 2012 are contradictory and their content caused the Applicant confusion about his employment.
- 10.2 On 7 December 2011 the Applicant was suspended from work pending investigation of concerns about the Applicant's performance. The disciplinary process concerned the performance but not conduct (with the exception of an undefined complaint by a colleague, AB, which was disputed by the Applicant).
- 10.3 No disciplinary action was taken against the Applicant.
- 10.4 Ms Beacom confirmed in evidence that the Respondent did not contact the Applicant about redundancy at any time during his suspension.
- 10.5 The Applicant had however been contacted by the Respondent during that time in connection with the disciplinary process.
- 10.6 The Applicant considered the suspension to be unjustified and disproportionate and wrote to the Respondent on 29 December 2011, appealing against the suspension and what he perceived to be a predetermined decision to dismiss him from his employment.
- 10.7 Disciplinary hearings convened for 29 December 2011 and 3 January 2012 were both reconvened by the Respondent. The Applicant had learned on the morning of each of these disciplinary hearings of the Respondent's intent to rearrange them.
- 10.8 On 3 January 2012, the Applicant was telephoned by JS, his line manager, and asked to attend work on 4 January to meet Ms Beacom. The Applicant asked what the purpose of the meeting was and was told simply, "Hannah has a few things she wishes to discuss with you".
- 10.9 On 4 January 2012 Ms Beacom wrote to the Applicant in response to the Applicant's letter of 29 December 2011, stating that the outcome of the disciplinary process was not predetermined and that the Applicant would be dismissed.
- 10.10 However, also on 4 January 2012 the Applicant received a second letter from the Respondent informing him that following the loss of the States of Guernsey bus service contract the Applicant's job would not exist beyond 31 March 2012. The letter did not include the word 'redundancy'.
- 10.11 The Applicant was not entitled to any contractual redundancy payment. The Respondent did not make any voluntary payment to the Applicant by way of compensation for redundancy. It appears from Tab 34 of the Respondent's bundle that a budget of £50,000 was made for redundancy payments. Ms Beacom gave evidence that such payments were termed a bonus, paid to staff who remained in

employment with the Respondent until 31 March 2012. The Respondent did not inform the Applicant that he would receive such bonus if he remained in post until 31 March 2012.

- 10.12 The Applicant lodged a grievance on 5 January 2012. TB gave evidence that he did not produce an investigation report, write to the Applicant setting out the conclusion of any investigation that he might have undertaken, or write and retain on file any notes of his conversations with staff about the grievance.
- 10.13 TB confirmed in evidence that the note at Tab 46 of the Respondent's bundle was written on 17 April 2012, after the effective date of termination (24 February 2012) and after the Applicant lodged his claim that the Tribunal (3 April 2012).
- 10.14 The Applicant did not accept that the bullying and harassment element of his grievances was dealt with effectively, or at all. The Applicant took the view on his last day of service that the matter was simply dealt with too late, and that such matters would cease to be relevant after the effective date of termination.
- 10.15 The Applicant's suspension was lifted on 9 January 2012, following the disciplinary hearing held by TB, and the Applicant returned to work the following day without further disciplinary sanction.
- 10.16 In February 2012, considering that he had no other option, the Applicant secured alternative employment by his own efforts and notified the Respondent on the 23 February that he wished to be released from his duties on 24 February 2012.
- 10.17 The Applicant refutes the Respondent's assertion that he was dismissed for redundancy for the following reasons:

The Respondent's bundle contained numerous documents relating to performance management of the Applicant under the disciplinary process. The Respondent claimed that this same process related to matters of conduct, however the only matter of conduct put to the Applicant during his employment was a matter of a colleague taking offence at the Applicant's efforts to assist her when answering someone else's telephone. The allegation remains contested by the Applicant and no disciplinary action was taken against him in respect of such.

- 10.18 It was further pointed out that the two letters to the Applicant are at odds in terms of content. In one letter the Applicant was informed that matters concerning his employment were not predetermined, but in the second letter of the same date he was informed that his employment was terminated in any event.
- 10.19 Mrs Bamber referred to Mrs Richardson's opening comments regarding the Commerce and Employment Code of Practice - Handling Redundancy at Section 10 where the three principles of a fair redundancy procedure stated these as being:
- Consultation with employees well before decisions are reached
 - Their objective basis for redundancy selection
 - Taking all reasonable steps to avoid or minimise redundancy.

- 10.20 However, Section 10 of the Code applies to small firms. Ms Beacom accepted in her evidence that the Respondent, at the time of the Applicant's dismissal, was a sizeable employer, by Guernsey standards. The benchmark for measuring whether employer has acted reasonably in all circumstances is therefore higher than the benchmark referred to in Section 10 of the code.
- 10.21 The Respondent staff handbook does not include a redundancy procedure. In the absence of its own procedure the Respondent is required to follow a fair process in dismissing employees by reason of redundancy. Ms Beacom confirmed in her evidence that the Respondent did not construct a process at the outset notwithstanding that the Company did not already have such process set out in its handbook. Despite Ms Beacom having taken legal advice together with advice from Commerce and Employment and having taken a significant amount human resources training from the Commerce and Employment Department the Respondent failed to consider and implement a redundancy process akin to the Commerce and Employment Code on handling redundancy, or an otherwise fair process.
- 10.22 It was the Applicant's contention that the procedure followed by Island Coachways was flawed for the following reasons:
- The Respondent failed to take reasonable measures to avoid redundancies and that in particular it failed to:
- Detail any specific measures that it may have explored to reduce non-staff costs
 - Demonstrate any consideration of application of measures to reduce staff costs without resorting to compulsory redundancy, or seek to minimise such redundancies such as:
 - Not filling vacant posts
 - Restrict recruitment
 - Undertake adequate retraining of staff
 - Make sufficient efforts to redeploy staff elsewhere in the organisation
 - Reduce or eliminate overtime
 - Introduce compulsory retirement for employees already exceeding normal retirement age
 - Invite staff to volunteer for redundancy
 - Invite employees to accept reduced hours, job share arrangements
 - Invite staff to put forward proposals to avoid compulsory redundancies
- 10.23 Ms Beacom confirmed that the Company, in the absence of an established or contractual Company procedure, constructed no redundancy process, and accordingly, staff were not informed of the process that would be followed, or the means by which staff would selected for redundancy.
- 10.24 Ms Beacom stated in evidence that no selection pools were constructed. In particular, the Respondent omitted a crucial stage in any redundancy process by failing to establish a selection pool containing the Applicant and failed to consider which other members of staff should be included in that pool.

- 10.25 Staff were not informed that their jobs were at particular risk of redundancy. The Applicant did not know that his job was specifically at risk until he received one of the Respondent's letters to him of 4 January 2012, which informed him of his dismissal.
- 10.26 Consultation was limited and inadequate and involved four memoranda concerning the redundancy situation. In respect of individual consultation the Applicant had only one brief meeting with his line manager to complete a form, the purpose of which was not explained to him at the outset. No further consultation was undertaken with the Applicant to establish his particular skills and competencies, and the form did not, it was submitted, represent a fair and comprehensive attempt to obtain full details of staff skills.
- 10.27 The scoring of staff included the subjective measure of Ms Beacom's view of staff.
- 10.28 Ms Beacom confirmed in evidence that staff were scored against roles at the discretion of management and were not invited to express any view about the roles they had been scored against. The Applicant did not know that he has been scored against any roles and was not invited to apply for any jobs.
- 10.29 Ms Beacom confirmed in evidence that staff were not consulted about the selection process and in particular the scoring criteria used. The selection process was not made known to staff, and in particular to the Applicant. Ms Beacom confirmed in evidence that the Respondent failed to inform the Applicant before his dismissal, of his particular score and the roles against which he was scored.
- 10.30 After receiving notice of the dismissal and only following his specific request, the Applicant was given some documents by TB, which related to the redundancy selection. This was following his return to work after suspension was lifted on 9 January 2012.
- 10.31 In terms of redeployment opportunities, information about potential roles was not made known to the whole workforce. Staff were invited to apply for particular opportunities at the discretion of management. This approach to the redeployment exercise was entirely subjective.
- 10.32 The Applicant also asserted that it was not fair that he should not be permitted to complete his PSV license training and that this had prejudiced him in redeployment with the Respondent and the new bus service provider. Why the Applicant's PSV training ceased is a matter of contention between the parties.
- 10.33 In relation to past Guernsey Tribunal cases the Applicant argued the recent case of **Tippett v Stewart Asset Management Group, 2013** represented the best fit in terms of circumstances of the applicant's case namely:
- There was no clear reason to dismiss was given by the employer
 - There was no demonstration of a fair process, in accordance with the Commerce and Employment Code of Practice Handling Redundancy - the Tribunal found that the lack of a fair and objective process and confusing
 - There was no meaningful consultation

- There were no notes recording the process in accordance with the consultation checklist set out in the Commerce and Employment Code of Practice
- There was no opportunity to appeal, such normally being “part of a reasonable employers process when conducting a redundancy dismissal”
- The employer was also found to breach the Law in respect of Mr Tippett's ‘Section 2 request’ for written reasons for dismissal.

10.34 With regard to the request for written reasons for dismissal:

The Applicant, following receipt of the Respondent’s two letters dated 4 January 2012, wrote on 11 January 2012 asking for written reasons for his dismissal.

To the best of his recollection the Applicant sent the request to the Respondent. He does not have electronic proof, or any other means proving that the letter was received by the Respondent.

Having received no written statement in response to his letter dated 11 of January 2012, the Applicant repeated his request by letter on 28 of March 2012. The Respondent replied by letter dated 3 April 2012. The Applicant considered the response simply referred him to his letter of dismissal, which was the letter that prompted the Applicant to make a ‘Section 2 request’, because he did not understand the reason for the dismissal.

The Applicant does not accept the letter of 3 April provides an adequate or true response to his request, not least in that it simply refers to the letter that caused the Applicant’s confusion and prompted his request.

11.0 Conclusions

11.1 The Tribunal recognises and accepts that the Respondent was, with the loss of the States bus service contract, facing a situation where it had a firm financial rationale for having to reduce staffing levels. Given the bus contract was in the public’s interest, the local media made the issue front-page news. It is fair to conclude therefore that anyone inside Island Coachways, or using the bus service, cannot have failed to recognise that the loss of the contract would have a serious financial impact upon the operational future of the Company.

11.2 The Tribunal takes account of the influential UK ruling in *Polkey v A.E. Dayton Services Limited* [1988] AC 344, HL, Lord Bridge stated that: “... in late case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation”. The judgment included four basic principles of fairness ‘which should always be considered’ in situations of redundancy:

- i. The duty to consult the employee
- ii. The duty to warn of redundancy
- iii. The duty to establish fair criteria for the selection of employees
- iv. The duty to explore alternatives to redundancy.

“Accordingly, consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too”.

- 11.3 These principles are relevant to the application made by Mr Craig.
- 11.4 The Tribunal also took into account the Code of Practice “Handling Redundancy” issued by Commerce and Employment which, whilst not binding in law, the adherence or non-adherence to this Code may be taken into account in determining whether a dismissal was fair or unfair.
- 11.5 The Applicant’s case, summarised in the closing argument against the Respondent, was that the Respondent decided to end Mr Craig’s employment contract by whatever means, but having carried out a flawed disciplinary process, it then sought to dismiss him under the cloak of an equally flawed redundancy process.
- 11.6 Whilst the Tribunal finds that a prepared redundancy policy and procedure might have better informed the workforce and management of the correct sequence of events and essential structure, the process followed by Island Coachways was largely within the spirit of the Commerce and Employment Code of Practice, Handling Redundancy. This is evidenced by:
- The nine week redundancy process, extended in late December 2011 to 31 March 2012, by virtue of discussions between the States and Island Coachways
 - The entire workforce selection pool, including the management team and Ms Beacom. No one in the family run firm was excluded from the selection pool
 - The four consultation/communication memoranda from Ms Beacom dated 7 November, 11 November, 25 November and 29 November 2011. These provided amongst other matters updates on media news about the States contract, the remaining elements of Island Coachways which would continue, such as the school bus service and the driving school, news of meetings to assess skill sets, information on opportunities to meet a Careers Adviser and Social Security, and finally news of the new bus contract provider
 - Ms Beacom’s and management’s open door policy during the process.
 - Assessment of skills consultations provided to the Applicant on 8 November 2011
 - Interviews with the new bus provider for new roles
 - Meetings with a Careers Adviser to identify those who wished to pursue re-training
 - Offers of Island Coachways training to improve skill set and qualifications for retained roles within the Company. For the Applicant this meant PSV licence training
 - Meetings with Social Security to discuss available benefits and training and employment options.
- 11.7 Even though Island Coachways did not have a written redundancy procedure Ms Beacom took legal advice and contacted Commerce and Employment and designed the process in line with the Commerce and Employment Code on Redundancy. It is

fair to note that there were certainly areas where the Company could have improved communication and consultation and the production of a redundancy procedure provided to the workforce would have aided this.

11.8 In particular the Tribunal notes the comments of the Applicant:

That he had no prior warning or knowledge of the benefit of the skill assessment meeting on 8 November 2011. The Tribunal accepts that prior knowledge of the meeting would have aided his understanding and cooperation, and contributed to his general awareness of the process.

During the Applicant's lengthy suspension from work, whilst investigations into his alleged conduct at work related to a disciplinary process were undertaken, the only communication he received from the Respondent was in relation to a disciplinary hearing. The suspension lasted from 7 December until 9 January 2012. Apart from the suspension from work being longer than one might see as usual practice, the Applicant was at the same time going through a redundancy procedure. Whilst somewhat understandable given the distractions the Company was facing with the loss of the contract, the combination of the disciplinary procedure and redundancy procedure isolated the Applicant for a good proportion of the nine-week redundancy procedure. The Respondent, with regard to this matter, suggested that the Applicant could have contacted Ms Beacom or other members of the management team for information by telephone or letter during this period.

11.9 The Applicant has made much of the Respondent's failure in the letter of the 4 January 2012 by which he was dismissed and also of the consultation/ communication memoranda failing to mention the word 'redundancy'. Ms Beacom accepted that she could have been more direct. Whilst the Tribunal felt that this was curious, it did not amount to a critical error, since the Applicant can have been in no doubt as to the nature of the dismissal given the events that preceded it, nor to the nature of the Company communications, since the matter was in the public domain.

11.10 The Applicant suggested that a further failing of the redundancy process followed by the Respondent was that the staff were scored against roles at the discretion of management and were not invited to express any view about the roles they had been scored against. The Applicant did not know that he had been scored against any roles and was not invited to apply for any jobs. Certainly the Tribunal concurred that this method excluded input from the member of staff but given that the Company relied on the input on skills assessment from the Applicant and then added this to the information provided on his CV, this process was reasonably thorough, if impersonal.

11.11 The Applicant himself added further complexity to the issues that the Respondent Company was facing by raising a grievance on 5 January 2012. The grievance concerned health and safety issues in relation to his working environment, bullying and harassment conducted by his immediate management, and complaints that the nature of the dispute proceedings that had been taken against him in April 2011, in particular, his view that there was no reasonable justification for his being suspended from work since 7 December 2011.

- 11.12 The Respondent's initial response to the Applicant's grievance was to investigate the health and safety concerns resulting in changes to the Applicant's working environment, however the hearing of the grievance and the follow-up did not constitute best practice. The Applicant's comments that the grievance hearing, being held on his final day at work, and was dealt with just too late, concur with the Tribunal's view of this matter.
- 11.13 The Tribunal reviewed both parties' case precedents in relation to the redundancy process as a whole and in particular to the need for an appeal and to the provision of a written redundancy procedure. The Tribunal found the cases referenced by the Respondent and the Commerce and Employment Guidelines compelling. The Tribunal accepts that the lack of a redundancy appeal is a relatively minor flaw.
- 11.14 In relation to the 'Polkey' four basic principles of fairness, the Tribunal finds as follows:
- The duty to consult the employee: Island Coachways provided four memoranda to its workforce which combined both consultation and communication, in addition to a skills assessment meeting with each member of staff, including the Applicant. There were some failings in this process, which included the lack of contact during the Applicant's suspension period and, the prior lack notification of the intention of the meeting regarding the skill assessment.
 - The duty to warn of redundancy: Whilst the Tribunal notes the curious omission of the word "redundancy" in any of the consultation and communication memoranda and the letter of 4 January 2012, in which the Applicant's employment was terminated, the Applicant can have little doubt as to the intention of the employer given the context of the entire process. The Tribunal agrees with Ms Beacom's comments that she could have been more direct in her communications with the workforce.
 - The duty to establish fair criteria for the selection of employees: The entire workforce was under threat of redundancy, including the MD, Ms Beacom, and all staff comprised the selection pool. The criteria were universally applied and the process of job matching was undertaken by management rather than by an individual. This could have been improved as the lack of personal choice was removed. However the Applicant was able to view the scoring and job matching process, but only after the fact.
 - The duty to explore alternatives to redundancy. The Applicant was provided with training to achieve his PSV license and was considered for roles with the new operator and for the remaining retained roles as a consequence of the job matching exercise, without success. In addition, meetings with a Careers Adviser and with Social Security were provided.
- 11.15 The Tribunal has considered the failings regarding both the disciplinary process, together with the Applicant's suspension, and the lack of due process with regard to his grievance meetings and finds that none of these matters had substantially altered the outcome of the redundancy process that Island Coachways followed in relation to the Applicant.
- 11.16 In addition, the redundancy process, though marked by some idiosyncratic elements and areas where improvements could be made, not least in the production of a

written redundancy policy and procedure and a more open process, it was largely in keeping with the spirit of the Commerce and Employment Code of Practice, Handling Redundancy. The Tribunal therefore finds that the Applicant was not unfairly dismissed.

11.17 In relation to the Section 2 request for written reasons of dismissal, the Tribunal was not convinced that the Respondent had received the letter of 11 January 2012, indeed the Tribunal noted that the letter of 28th of March 2012, does not reference the previous letter. Given that the letter of 28 March 2012 was correctly responded to, and in the absence of any other proof of the sending and receipt of the letter of 11 January 2012, the Tribunal holds that the Respondent met the requirement to fulfil the Section 2 request made on 28 March 2012, and has no further legal obligations in this regard.

12.0 Decision

12.1 Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

12.2 The Tribunal finds that the Respondent was not in breach of Section 2(1) of the Law.

Ms Georgette Scott
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8 August 2013
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Signature of the Chairman

Date